

REMARKS/ARGUMENTS

The Applicant has carefully considered this application in connection with the Examiner's Action and respectfully requests reconsideration of this application in view of the foregoing amendment and the following remarks.

The Applicant originally submitted Claims 1-36 in the application. The Applicant has amended Claims 7, 8, 14, 19, 20, 31 and 32. The Applicant has not canceled or added any claims. Accordingly, Claims 1-36 are currently pending in the application.

I. Formal Matters and Objections

The Examiner objected to Claim 7 because the term “a number” was used twice in Claim 1, thereby causing an ambiguity in the use of “said number” in Claim 7. Claim 7 has been amended to correct this informality. The Applicant thanks the Examiner for pointing out this ambiguity.

II. Obviousness-Type Double Patenting

The Examiner rejected Claims 1-36 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-34 of U.S. Patent No. 6,708,881 to Hartmann. Before addressing whether this doctrine is applicable in the present case, the Applicant would like to address the rationale used by the Examiner in rejecting Claims 1-36 under the judicially created obviousness-type of double patenting. That is, the invention set forth in the ‘881 patent is not a species of the claims set forth in the present application. The ‘881 patent is addressed to a reader and the claims in the ‘881 patent can be infringed without infringing the claims set forth in the present application. By the same token, the claims set forth in the present application, which

are addressed to a SAW RFID tag, can be infringed without infringing on claims set forth in the '881 patent. The claims in the '881 patent are not a species of claims set forth in the present application.

With respect to the application of the judicially created doctrine of obviousness-type double patenting objection, please note that the December 18, 2001 filing date for the present application precedes the January 30, 2002 filing date for the '881 patent. The grant of a patent under the present application will not result in any extension of rights granted under any the '881 patent. This is not the type of situation where it is appropriate to assert an objection under the judicially created doctrine of obviousness-type double patenting. For the same reason, it makes no sense to require a terminal disclaimer with respect to the present invention, because the term of any patent issued pursuant to the present application will have expired before expiration of the '881 patent. In view of the fact that no extension of rights will be granted, a rejection under the judicially created doctrine of obviousness-type double patenting is not appropriate in the present case. The Applicant, therefore, respectfully requests the Examiner to withdraw the rejection of Claims 1-36 as being unpatentable under the judicially created doctrine of obviousness-type double patenting.

II. Rejection of Claims 1-6, 9-18, 21-30 and 33-36 under 35 U.S.C. §102

The Examiner has rejected Claims 1-6, 9-18, 21-30 and 33-36 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,455,979 to Reindl, *et al.* (Reindl). As the Examiner is no doubt aware, anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference; the disclosed elements must either be disclosed expressly or inherently and must be arranged as in the rejected claims.

Reindl does not disclose each and every element of the invention claimed by the Applicant in independent Claims 1, 13 and 25. Reindl discloses a substrate material that has a surface with a piezoelectric material characteristic, with at least one electroacoustic transducer disposed thereon. The transducer produces a surface acoustic wave in the surface and a reflector structure returns a response signal. The reflectors function as code elements based on their spacing on the substrate surface. (Col. 4, lines 19-45). In one embodiment, a matrix is used to place the reflectors on the substrate so that this response signal will be coded based on a shift in time with respect to the interrogation signal. (Col. 4, lines 35-39). In another embodiment, a frequency matrix is used to locate resonators (reflectors). Nowhere does Reindl disclose a reflector located on a substrate based on both pulse position and phase position. In fact, throughout Reindl the location of reflectors is dependent solely on one of two factors, time or frequency. Nothing in Reindl describes or suggests that reflectors can be located by both pulse position and phase position on a substrate in order to encode a number. Reindl describes locating a reflector based on either time position or frequency position, but not both.

Reindl does not disclose each and every element of the claimed invention and, as such, is not an anticipating reference for independent Claims 1, 13 and 25. Because Claims 2-6, 9-12, 14-18, 21-24, 26-30 and 33-36 are each, respectively, dependent upon one of independent Claims 1, 13 and 25, Reindl also cannot be an anticipating reference for 2-6, 9-12, 14-18, 21-24, 26-30 and 33-36. Accordingly, the Applicant respectfully requests the Examiner to withdraw the §102 rejection with respect to these claims.

III. Allowable Subject Matter

The Examiner indicated that Claims 7, 8, 19, 20, 31 and 32 would be allowable if rewritten in independent form, including all the limitations of the base claim and any intervening claims. In accordance therewith, the Applicant has amended Claims 7, 8, 19, 20, 31 and 32 to include such limitations. Therefore, the Applicant respectfully requests the Examiner to issue a notice of allowance with respect to such claims.

IV. Conclusion

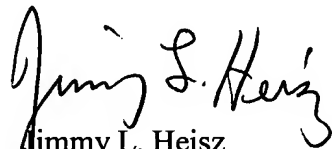
In view of the foregoing amendment and remarks, the Applicant now sees all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicits a Notice of Allowance for Claims 1-36.

A check for the Petition for Extension of Time is included in this response in the sum of \$490.00 The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 08-2395.

The Applicant requests the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application.

Respectfully submitted,

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